TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1887.

No. 1135.

THE ÆTNA LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT, APPELLANT,

vs.

THE TOWN OF BELMONT AND THE TOWN OF GRENARD (NOW CALLED CRESCENT).

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

FILED OCTOBER 8, 1887.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, OCTOBER 18, 1887.

1 Pleas in the circuit court of the United States for the northern district of Illinois, held at the United States court-rooms, in the city of Chicago, in the district aforesaid, before the Hon. Henry W. Blodgett, judge of the district court of the United States for said northern district of Illinois, on Tuesday, the fifth day of July, in the July term of said court, in the year of our Lord one thousand eight hundred and eighty-seven, and of our Independence the one hundred and twelfth year.

WM. H. BRADLEY, *Clerk.*

NORTHERN DISTRICT OF ILLINOIS, *ss:*

ÆTNA LIFE INSURANCE COMPANY,
vs.
THE TOWN OF BELMONT *et al.*
} In Chancery.

Be it remembered that on the twenty-seventh day of May, 1886, came the complainant, by its solicitors, and filed in the office of the clerk of the circuit court of the United States for the northern district of Illinois, at Chicago, in said district, its bond for costs and bill of complaint in said above-entitled cause, which said bond and bill are respectively in the words and figures following, to wit:

2 *Bond for Costs.*

Circuit Court United States of America, Northern District of Illinois, May Term, A. D. 1886. In Equity.

THE ÆTNA LIFE INSURANCE COMPANY
vs.
THE TOWN OF BELMONT *et al.*

I do hereby enter myself security for costs in this cause and acknowledge myself bound to pay or cause to be paid all costs which may accrue in this action, either to the opposite party or to any of the officers of this court, in pursuance of the laws of this State and of the United States.

Dated this 24th day of May, 1886.

O. J. BAILEY.

Endorsed: Filed May 27, 1886. Wm. H. Bradley, clerk.

3 In Circuit Court. May Term, A. D. 1886.

UNITED STATES OF ANERICA, *Northern Dist. of Illinois:*

To the honorable the judges of the circuit court of the United States for the northern district of Illinois:

The Ætna Life Insurance Company, a corporation constituted by the laws of the State of Connecticut and having its office and principal place of business at Hartford, in said State, and a citizen of said State, brings this its bill in equity against the town of Belmont

and against the town of Grenard, now called Cresent, municipal corporations under the laws of the State of Illinois, situated in the county of Iroquois, in said northern district, and citizens of said State of Illinois, and against the Chicago, Danville & Vincennes Railroad Company, a corporation under the laws of Illinois and a citizen thereof.

And thereupon your orator showeth to your honors:

That in the year 1865 the said Chicago, Danville & Vincennes Railroad Company was incorporated under the laws of the State of Illinois with power to construct a railroad in said State from a point in Lawrence county by way of Danville to the city of Chicago. For more full information as to the powers and duties of the said railroad company, and as to the location and objects thereof your orator refers your honors to the act of incorporation in the Private Laws of Illinois for 1865, volume 2, page 140.

For the purpose of aiding said company in the construction of its railroad the Legislature of Illinois, on the 7th day of March, 1867, passed an act, entitled "An act to authorize cities, towns, or townships lying within certain limits, to appropriate moneys and levy a tax to aid the construction of the Chicago, Danville & Vincennes railroad, approved March 7, 1867," to which act, as recorded in the Private Laws of Illinois for 1867, volume 1, page 842, reference may be had.

Your orator avers that said act authorized all incorporated towns and cities and towns acting under township organization lying wholly or in part within twenty miles of the east line of the State of Illinois, and also between the city of Chicago and the southern boundary of Lawrence county, in said State, to appropriate such sums of money as they should deem proper to the said Chicago, Danville & Vincennes Railroad Company, to aid it in the construction of its road, to be paid as soon as the track of said road
4 should be laid and constructed through such cities, towns, or townships: Provided, however, that a proposition to make such appropriation should first be submitted to a vote of the legal voters of such cities, towns, or townships at a regular, annual, or special meeting of which at least ten days' previous notice should be given, and also provided that a vote should be taken on such proposition, by ballot, at the usual place of election, and that a majority of the votes cast should be in favor of the proposition; and your orator further avers that said act authorized and required the authorities of such cities, towns, and townships to levy and collect such taxes and to make such other provisions as might be necessary and proper for the prompt payment of such appropriations so made.

And your orator showeth to your honors that in and during the years 1867 and 1868 the then town of Belmont, in said county of Iroquois, was acting under township organization, pursuant to the laws of Illinois, and was within the limits named in said act, lying, as it did, wholly or in part within twenty miles of the east line of the State of Illinois, and also between the city of Chicago and the county of Lawrence, before named, and so was duly authorized

by said act to make appropriations to said railroad company, in the mode prescribed in said act, to aid it in the construction of its road, and that the authorities of said town were both authorized and required to levy and collect such taxes and to make such other provisions as might be necessary and proper for the prompt payment of such appropriations.

And now your orator showeth to your honors that on the 10th day of June, 1867, in pursuance of a legal, written notice, duly published according to law not less than ten days previously, a legal special meeting of the legal voters of the then said town of Belmont was held at the usual place of holding elections, and that said meeting being duly organized said voters proceeded to cast their votes, by ballot, for and against the proposition to levy and collect a tax of nine thousand dollars ($9,000) upon the taxable property of the inhabitants of said town to aid in the construction of said railroad: provided Watseka, a city situated in or near the north line of said town, should be made a point in said road. And your orator saith that the votes so cast being duly canvassed and counted it appeared that sixty-one of them were in favor of such tax and that forty-one of them were against it, and that thereupon the proposition to levy and collect such tax was duly declared carried and the proceedings at and relating to said meeting and said vote were duly attested by the town clerk of said town and by the moderator of said meeting and, as so attested, were by said town clerk duly recorded on the records of said town.

And your orator further showeth that, on the second day of June, 1868, in pursnance of a legal written notice, duly published, not less than ten days previously, the legal voters of said town again held a legal, special meeting, at the usual place of holding elections in said town, and that said meeting, being duly organized, said voters proceeded to cast their votes, by ballot, for and against a tax on the taxable property of the inhabitants of said town of an additional sum of nine thousand ($9,000) dollars, to be appropriated to said railroad company to aid it in the construction of its railroad; provided, that the said city of Watseka should be made a point in said road, and that said votes, so cast, being duly counted and canvassed, it appeared that ninety-nine of them were in favor of said additional tax, and nineteen of them were against it, and that, thereupon, the proposition to levy said additional tax, to be appropriated to said road as aforesaid, was duly declared carried, and the proceedings at and relating to said meeting, and the said vote, were duly attested by the moderator of said meeting and by the town clerk of said town, and so attested were duly recorded by said town clerk upon the records of said town.

And your orator saith that by the enactments of the Legislature of Illinois, above cited, said voters were empowered to bind the said town of Belmont by said votes, and that said town thereby, then and there, became bound to levy and collect the taxes so voted, as soon as said road should be laid out and constructed through said town, provided said city of Watseka should be made a point in said road, and therewith to pay over to the said railroad company the

said sums of nine thousand dollars, each, amounting to the sum of eighteen thousand ($18,000) dollars, so appropriated by said town to said company under the authority of the said enactments.

And your orator saith that the said appropriations so made were, at or about the time of making the same, entered and recorded by the supervisor of said town upon a book kept for that purpose by the said railroad company to the intent that the said company should have due knowledge and evidence of such appropriations and be bound on its part to fulfil the conditions upon which such appropriations were made.

And your orator further saith that the votes and proceedings aforesaid and the said records thereof constituted valid, legal contracts in writing, whereby, upon fulfillment by said company of the conditions thereof, said town was bound to pay said appropriations to said company and to levy and collect such taxes and to make such provisions as were necessary and proper for the prompt payment of the same, as authorized and required by the said act passed March 7, 1867, above referred to.

Your orator saith that the said railroad company had full knowledge of the said proceedings, votes, and appropriations, and of the conditions thereof, assented thereto and complied with the conditions prescribed in said act of March 7, 1867, and with the conditions prescribed or implied in said votes made said city of Watseka a point in said railroad, and relying on said appropriations and on the good faith of said town of Belmont in keeping its obliga-
6 tions under said votes, on or about the — day of July, 1871, had laid, constructed, and completed its railroad through the said town of Belmont; and your orator avers that so the said conditional contracts, making the said appropriations of $9,000 each, became absolute contracts on the part of said town, whereby said town and its successors became bound to levy and collect such taxes and to make such provisions as were necessary and proper for the prompt payment of the said appropriations, according to the true intent and meaning of the said act of March 7, 1867, and of the said votes passed under the authority thereof.

And your orator further showeth to your honors that subsequently to the passage of the said act of March 7, 1867, and before the laying and construction of the said railroad track by the said railroad company, to wit, on the 26th day of February, 1869, for the purpose of confirming and legalizing appropriations to said company, made by municipal corporations under the authority of the act of March 7, 1867, before named, and for the purpose of enabling such corporations the better to pay such appropriations, the Legislature of Illinois passed another act, entitled "An act to legalize certain aids heretofore voted and granted, to aid in the construction of the Chicago, Danville & Vincennes railroad," approved February 26, 1869, to which act, as published in the Private Laws of Illinois for 1869, volume 3, page 355, reference may be had; and also that, on the 24th day of March, 1869, the said Legislature, for the like purpose, passed another act entitled "An act to enable towns, townships, cities, or counties along the line of the Chicago, Danville

& Vincennes railroad to contribute toward the construction of said railroad," approved March 24, 1869, to which act, as recorded in the Private Laws of Illinois for 1869, volume 3, page 356, reference may be had.

And your orator saith that the said railroad company, relying on the provisions of the act of March 7, 1867, and upon the votes and acts of the said town of Belmont and of its authorities, officers, and agents under the same, and also relying upon the said acts passed in 1869, accepted the conditions of the said appropriations made to it by said town of Belmont, and, on the faith thereof, laid, constructed, and completed its track through said town.

Your orator further showeth to your honors that, after the aforesaid votes were passed and the aforesaid appropriations were made by the said town of Belmont, at some time before March 23, 1871, but at what precise time your orator does not know, the territory of the said town of Belmont was divided into two separate towns, called, one the town of Belmont and the other the town of Grenard, both of which towns are made defendants herein; and your orator, upon information and belief, saith that the corporate name of said town of Grenard has, at some time since its organization, been changed, and that, in fact, said town is now called the town of Crescent.

7 On the 23d of March, 1871, the town clerks and supervisors of the towns of Belmont and Grenard, defendants herein, assumed to divide the debt of the town of Belmont incurred in making the said appropriation of eighteen thousand ($18,000) dollars to the said railroad company, and to apportion the same according to the statute laws of Illinois, and in so doing, alloted to the town of Belmont the sum of fourteen thousand four hundred ($14,400) dollars as its share thereof; and to the town of Grenard the sum of three thousand six hundred ($3,600) dollars as its share thereof; and thereupon the said town clerks and supervisors assumed to issue, and, as is recited upon the records of the town clerk of the town of Belmont, defendants herein, did issue fourteen bonds, amounting in all to fourteen thousand ($14,000) dollars, as evidences, to that extent, of its share of said debt, and professedly for the purpose of paying the same, said bonds being each for the sum of one thousand ($1,000) dollars, and numbered from No. 1 to No. 14, maturing July 1, 1881, with coupon interest notes for each year's interest, at ten per cent. per annum, attached, payable July 1st in each year, reserving the right of the town to pay said bonds, with the interest due thereon, at any time after two years from the date thereof. Said bonds were signed by the supervisor and town clerk of said new town of Belmont, defendant herein. A copy of one of them is hereto annexed, made part hereof, and marked Exhibit A.

The said bonds being so signed and issued said supervisors and town clerks placed them in the hands of a trustee to be delivered to the said railroad company upon the completion of said railroad through the town of Belmont, according to the intent of said votes hereinbefore recited, and said trustee afterwards, upon such com-

pletion, so delivered them. Whether the division of said town and the apportionment of said debt were legally made or not your orator is not advised, and cannot affirm; but your orator is informed and believes, and thereto alleges, that hitherto such division and apportionment have been acted upon and acquiesced in by all persons interested therein, and that, therefore, your orator has a right to assume and to allege, and doth allege, that the same are valid and legally binding upon the towns of Belmont and Grenard, defendants herein.

And your orator further saith that at some date, unknown to your orator, but after the issuing and delivery of the said fourteen bonds to a trustee, as hereinbefore recited, the supervisor and town clerk of said new town of Belmont signed and issued another bond for the amount of one thousand ($1,000) dollars, with coupons annexed, being of the same purport and tenor as the said fourteen bonds, which bond was intended to provide for the payment of the sum of four hundred ($400) dollars not covered by the said fourteen bonds, and also to cover the sum of six hundred ($600) dollars for interest or deficiencies growing out of said appropriations, of which your orator is unable to give a more particular account, and
8 which bond was, either through the intervention of a trustee or otherwise, after the completion of said road, delivered to said railroad company for the same purpose and upon the same understanding, express or implied, as the fourteen bonds hereinbefore named.

Your orator further showeth to your honors that the town of Belmont, defendant herein, at its annual town meeting, held on the first Tuesday of April, 1876, recognized and affirmed the validity of said bonds and of the appropriations made under the authority of the votes and proceedings hereinbefore recited, and recognized and affirmed its obligation to pay said bonds and said appropriations by the adoption of the following vote, unanimously passed by the legal voters of said town present at said meeting, to wit:

"Whereas the town of Belmont did, in compliance with a vote of said town, at an election previously held, issue fifteen one-thousand dollar bonds to aid in the construction of the C., D. & V. R. R., "meaning the Chicago, Daville & Vincennes railroad," said bonds being dated July 1, 1871, running ten years, bearing 10 per cent. interest, with a provision that the town, at any time after two years from date, shall have the privilege to pay any of said bonds: Therefore,

"Resolved, and it hereby is ordered, That a tax be levied on the taxable property of said town of Belmont to the amount of twenty-three hundred dollars, * * * said town meaning and intending by such tax to provide for the payment of interest on said bonds, which vote was duly attested by the town clerk of said town and by the moderator of said meeting, and, so attested, was recorded at length on the records of said town."

The said town of Belmont, defendant herein, has also repeatedly recognized and affirmed the validity of said appropriations and said bonds and its obligation to pay the same, and to levy and collect

taxes therefor, by paying the annual interest accruing on said bonds from their date, July 1, 1871, up to and including the interest thereon due July 1, 1876.

And your orator further saith that, upon the division of said town of Belmont, the said towns of Belmont and Grenard, formed and organized by such division, became charged in law with all the debts and obligations of said town, and became liable for the payment of the same to whoever might be the holders thereof, and that, by reason of the apportionment hereinbefore alleged the said town of Belmont, defendant herein, became liable for the payment of that part of the said sum of eighteen thousand ($18,000) dollars voted by said original town of Belmont, which was apportioned to it in manner as hereinbefore stated, and for the payment of the lawful interest thereon, and your orator avers that, by reason of such division and apportionment, the said town of Belmont, defendant
9 herein, became liable, and is liable, for the payment of the debt intended to be evidenced or represented by the said fifteen bonds, and by reason of its acquiescence in the apportionment aforesaid and of its votes recognizing its obligation to pay said bonds, your orator saith that said town is forever estopped from denying said liability.

And your orator saith that the said Chicago, Danville & Vincennes Railroad Company, no part of said appropriations having been paid, accepted said bonds in good faith as evidence of the debt incurred by said original town of Belmont by voting in favor of said appropriations, and also, believing that the said bonds represented said debt, so modified that it was payable in time and with interest according to the apparent tenor and effect of the said bonds, and also accepted said bonds as negotiable securities duly authorized by said town of Belmont, constituting, in themselves, legal choses in action against said town in the hands of the bearer or of any person or persons to whom they should have been transferred in good faith, either by endorsement or delivery.

And so believing, the said railroad company, on or about the 1st day of July, 1871, put the said bonds upon the market for sale in order to raise the money necessary for the payment of the appropriations made to it by the said town of Belmont, believing that the purchasers of said bonds would by the purchase of the same be substituted to all their rights of action against said town by reason of the premises, according to the tenor and effect of said bonds, as good and valid negotiable instruments, and that if for any cause said bonds should prove not to be valid as negotiable instruments, constituting in themselves good causes of action, that they were, at least, evidences of debt, entitling the purchasers and holders thereof to recover of said town of Belmont, defendant herein, the several amounts named in them, with the lawful interest thereon, according to their tenor, and so believing said railroad company, by means of their agents, servants, or assigns, sold the said bonds in the market.

And your orator saith that on or about the 1st day of August, 1871, your orator, in like manner believing that said bonds were evidences of debt against said town, representing said appropriations, and were

good and valid negotiable instruments, entitling the holder to recover of said town the moneys therein specified, according to the apparent tenor and effect of said bonds, purchased the same in the market and paid therefor the sum of fourteen thousand seven hundred ($14,700) dollars, which moneys came to the use of the said railroad company, or of its assigns, in satisfaction of all claims which said company, or its assigns, had against the said town by reason of said appropriations or of said bonds to the extent represented or intended to be represented by said bonds and as the consideration of the assignment of such claims to your orator.

10 And your orator saith that the intent and purpose of the said railroad company, its agents, servants, or assigns, in selling and delivering to your orator the said bonds, and in receiving the said money therefor, was to subrogate your orator to all rights which said company had against the original town of Belmont, or against the town formed out of the same, defendants herein, by reason of said bonds or by reason of the said appropriations to the extent represented or intended to be represented by said bonds, and that the intent and purpose of your orator in purchasing said bonds and paying its money therefor was to acquire such rights and to be subrogated thereto.

And your orator avers that by reason of the facts herein alleged your orator was, in equity, subrogated to said rights, and is entitled to enforce the same against said town of Belmont, defendant herein, by exhibiting this its bill in equity against said town to this honorable court, and that said town, by its acts and votes, and especially by its unanimous vote on the first day of April, 1876, herein recited, and by paying to your orator the interest on said bonds, and levying and collecting taxes therefor, admitted the subrogation of your orator to such rights and the title of your orator to enforce such rights against said town, and is forever estopped from denying the same.

And your orator further saith that up to the first day of July, 1876, to which date the said town paid the interest on said bonds, your orator had no knowledge, information, or belief that said town claimed that said bonds or that said appropriations were not legal and valid and binding on said town.

And now your orator showeth to your honors that on or about the 26th day of June, 1876, the said town of Belmont, defendant herein, then in the full enjoyment of the benefits of said appropriations, having received the full consideration therefor, notwithstanding its acts and votes aforesaid, exhibited its bill in equity to the judges of the honorable circuit court for the county of Iroquois aforesaid against your orator as the holder of said bonds, so called, and against certain other persons whom it is not material to name, alleging, in substance, the making and issuing of said bonds, as herein stated, that the same were delivered to your orator, that your orator was the holder thereof, and that the same were made and issued without authority of law and were invalid, and praying the court so to decree and to enjoin your orator from collecting the same and for other relief, as by the record in the cause, upon reference thereto, will fully appear.

The circuit court, to which said bill was exhibited, dismissed the same, and thereupon the said town appealed from the decree of dismissal to the honorable the supreme court for the northern grand division of Illinois, the court of highest and ultimate jurisdiction in said State, which court, at a term thereof holden on the 12th
11 day of September, 1876, reversed said decree, held that said bonds were void as issued without authority of law, and remanded the cause to the said circuit court for further proceedings. Whereupon the said circuit court passed a decree in conformity with the opinion of the said supreme court, adjudging the said bonds void, as having been made and issued without authority of law, and enjoined your orator from collecting the same.

For the better information of your honors your orator refers to the bill and decree in said cause, and also refers to the opinion of the said Supreme Court in the Town of Middleport *vs.* The Ætna Life Insurance Company and others, reported in the Reports of Legal Decisions for the State of Illinois, volume 82.

Your orator saith that while the said supreme court held and the said circuit court adjudged that the said bonds were made and issued without authority of law, and that, therefore, no action could be sustained on them as negotiable instruments in the hands of *bona fide* holders for value, neither of said courts held or adjudged that the said appropriations of money, voted by the said town of Belmont to said railroad company were not good and valid in law and did not constitute good causes of action, which said company and your orator, subrogated to the rights of said company, could enforce against said town of Belmont and its successors.

Your orator submits to your honors that, on the contrary, said courts impliedly admit the validity of said appropriations, since they limit their opinion and judgment to the question of the validity of the bonds, and merely decide that as such they were issued without authority of law, so that neither the said railroad company nor any person claiming through them could maintain an action on them. The said bill contained allegations to the effect that said appropriations were void because the said railroad company had not completed its road before the time when the provisions of the constitution of Illinois prohibiting such appropriations went into effect; but said courts did not so decide, but simply decided that the bonds were void as made, and issued without authority of law.

Your orator avers that by the issue and delivery of said bonds to the said railroad company, ratified and confirmed by the unanimous vote of the legal voters of said town of Belmont, defendant herein, passed on the first day of April, 1876, and by the acceptance of said bonds by said railroad company, the obligation incurred by the town of Belmont, in making said appropriations was so modified that said appropriations, instead of being payable upon the completion of said road through the town, became payable in time, with interest, as provided in said bonds; and your orator avers that the said bonds were and are evidences of debt, so payable, and
12 your orator saith that, although said courts decided that said bonds as bonds, constituting in themselves causes of action,

were void, as having been made and issued without authority of law, they did not decide that they were not legal evidences of debt, payable with interest as therein specified.

And your orator, upon information and belief, saith that the town of Belmont, defendant herein, pretends, and will claim before the court upon the trial of this cause, that by said decree of the circuit court of Iroquois county, all the matters herein alleged as constituting rights of action against it have been adjudicated so that your orator is estopped from asserting them again, but your orator alleges and shows to your honors that such pretence is unfounded, and that all such matters remain open and unaffected by said decree, as by the said decree the bill of complaint in the cause, on record in said court, and the opinion of the Supreme Court of Illinois, herein before cited, reference thereunto being had, will fully appear.

And your orator avers that by the issue, delivery, and acceptance of said bonds in manner aforesaid the obligation incurred by said town of Belmont in making said appropriations was so modified that said appropriations, instead of being payable on the completion of said road through the town, became payable on time, with interest, in manner specified in said bonds, and further saith that if it was not so modified that then in that case said appropriations remained unaffected and unimpaired by reason of said bonds, so that said company had the right to recover the same of said town, and of its successors, such issue, delivery, and acceptance, notwithstanding, together with lawful interest for the detention thereof, and your orator saith that in either case your orator, by reason of the facts herein alleged, was subrogated to all the rights which the said railroad company had against the said town of Belmont, which voted said appropriations, or against its successors, the towns of Belmont and Grenard, defendants herein,

And your orator further saith that no part of the principal sum named in said bonds and no part of said appropriations has ever been paid, but that, on the contrary, the said town of Belmont, defendant herein, whose duty it became to pay the same, denies all liability therefor, and unjustly detains from your orator the moneys due thereon; and your orator avers that by reason of such unjust detention the said town is liable in law and in equity to pay interest as damages for such unjust detention.

Ever since the purchase of said bonds as aforesaid your orator has continued to hold and now holds the same, and has been and now is the holder of all the rights which the said railroad company or its assigns had against the said towns, or either of them, by reason of the premises.

13 Your orator therefore prays your honors by proper orders and decrees to declare your orator subrogated to all the rights of said railroad company or of its assigns, against said towns, or either of them, by reason of the premises to ascertain the amount due to your orator by reason of the facts herein alleged and the interest which has thereon accrued, either as interest or as damages for the delay of payment, and to adjudge and decree that the town of Belmont, defendant herein, shall pay to your orator the amount so

found due, and the interest thereon, and shall without delay levy and collect all taxes necessary for such payment, together with the costs of this proceeding, and in ascertaining the amount due, in case your honors shall be of opinion that the obligation incurred by said appropriations were modified by the issue, delivery, and acceptance of said bonds as herein alleged, then and in that case to find that said amount is the principal sum of fifteen thousand ($15,000) dollars named in said bonds, and the interest thereon, according to the tenor of said bonds, less the interest paid as aforesaid up to July 1, 1876; but in case your honors shall be of opinion that said obligations were not so modified, then and in that case to find that the amount which the said town of Belmont shall pay to your orator is the amount of said appropriations, apportioned to it on the division of the said original town of Belmont, and the lawful interest thereon for the detention of the debt.

And your orator prays your honors to enforce the rights of your orator in the premises by writs of mandamus and by such other and further orders and decrees according to the course of equity as shall be necessary and proper to afford the relief herein prayed for, and to grant such other and further relief as shall be equitable, just, and proper, together with the costs of this proceeding.

Your orator saith, that the said town of Belmont, which passed said votes, before the division thereof, if it now has any corporate existence other than that of its successors, the said towns into which it was divided, has no officers upon which service of a subpœna can be made, and that therefore said town is not made party hereto, except by making its successors parties as by law invested with its rights, and subjected to its obligations. If your honors shall be of opinion that said town ought to be made party hereto, in any other manner, or ought to be otherwise served with process, commanding it to appear and answer this bill, your orator prays your honors to pass the proper orders therefor.

Your orator asks for no relief as against the said town of Grenard, except in case the division and apportionment aforesaid shall be found ineffectual in law to bind the said town of Belmont, defendant herein, to pay that part of the debt incurred by said appropriations, apportioned to it, in which case your orator prays your honors to apportion said debt between the town, defendants herein, and to grant such relief against the said town of Grenard as shall be just and proper.

14 Your orator saith, upon information and belief, that some time after your orator purchased said bonds and became subrogated to the rights of the said Chicago, Danville & Vincennes Railroad Company, as herein alleged, but at what precise time your orator does not know, the said company became insolvent, and was by this honorable court placed in the hands of a receiver, to wit, W. H. Leyford, of ——, and your orator asks permission of this court to make said receiver as such also a party defendant hereto.

May it please your honors, the premises considered, to grant to your orator a writ of subpœna issuing out of this honorable court and under its seal, directed to the said town of Belmont and to

said town of Grenard, now called Crescent, defendants herein, and to the said Chicago, Danville & Vincennes Railroad Company, also defendants herein, commanding them to appear and answer to this bill of complaint.

To the end, therefore, that the said town of Belmont, defendant herein, may, if it can, show why your orator should not have the relief herein prayed for, your orator prays that the said defendant may full, distinct, and perfect answers make to all and singular the allegations in this bill contained, either admitting or denying the same, but not under oath, your orator hereby expressly waiving such oath, as by the rules of the court permitted, and that the other defendants may make such answers as they shall severally be advised to make.

THE ÆTNA LIFE INSURANCE COMPANY,
By its solicitors, BAILEY & SEDGWICK.

FRANCIS FELLOWES, *Of Counsel.*

15 EXHIBIT A.

UNITED STATES OF AMERICA, *State of Illinois:*

Bellmont Township Railroad Bond.

No. —. $1,000.

Know all men by these presents that the township of Belmont, in the county of Iroquois and State of Illinois, acknowledges itself to owe and be indebted in the sum of one thousand dollars, lawful money of the United States of America, which sum of money the said township of Belmont promises to pay to the bearer at the American Exchange National Bank in New York on the first day of July, in the year one thousand eight hundred and eighty-one, with interest thereon at the rate of ten per centum per annum, which interest shall be payable yearly on the first day of July, in each year at the American Exchange National Bank in New York, upon presentation and delivery of the warrants or coupons severally hereto annexed until the payment of the said principal sum ; said township reserving the right to pay this bond and the interest due thereon at any time after two years from date.

This bond is issued under and by virtue of a law of the State of Illinois entitled "An act to authorize cities, towns, or townships lying within certain limits to appropriate moneys and levy a tax to aid the construction of the Chicago, Danville & Vincennes railway," approved March 7, 1867, and in accordance with the vote of the electors of said township, taken at a special town meeting held June 10, 1867, and a certain other vote taken at a certain other special meeting held on the 2nd day of June, 1868, in pursuance of said act; also under and virtue of a law of said State entitled "An act to legalize certain aids heretofore voted and granted to aid in the construction of the Chicago, Danville & Vincennes railroad," approved February 26, 1869; and the faith of said township is hereby pledged for the payment of said principal sum and interest as aforesaid.

In witness whereof the supervisor and clerk of said township of Belmont have subscribed this bond this twenty-third day of March, one thousand eight hundred and seventy-one. No interest is to accrue on the bond until the first day of July, 1871.

S. WILLIAMS, *Supervisor.*

WM. WARREN, *Clerk.*

Belmont Township Railroad Bond. Interest Warrant.

$100. No.

On the first day of July, 1879, the township of Belmont, Iroquois county, State of Illinois, will pay to the bearer one hundred dollars at the American Exchange National Bank of New York, being one year's interest on bond numbered as above.

S. WILLIAMS, *Supervisor.*

WM. WARREN, *Clerk.*

AUDITOR'S OFFICE, ILLINOIS, SPRINGFIELD, *July* 6, 1871.

I, Charles E. Lippincott, auditor public accounts of the State of Illinois, do hereby certify that the within bond has been registered in this office this day, pursuant to the provisions of an act entitled "An act to fund and provide for paying the railroad debts of counties, townships, cities, and towns," in force April 16, 1869.

In testimony whereof I have hereunto subscribed my name and affixed the seal of my office the day and year aforesaid,

C. E. LIPPINCOTT,
Auditor Public Accounts.

(Auditor's Office.)

Endorsed: Filed May 27, 1886. Wm. H. Bradley, clerk.

16 On the same day, to wit: On the twenty-seventh day of May, 1886, there issued out of said clerk's office a writ of subpœna in said entitled cause, which said writ, together with the return of the marshal thereto attached, are in the words and figures following to wit:

Subpœna.

UNITED STATES OF AMERICA, *Northern District of Illinois,* } *ss:*

The United States of America to the town of Belmont, and the town of Grenard, now called Crescent, both in Iroquois county, Illinois, the Chicago, Danville and Vincennes Railroad Company, and W. H. Leyford, receiver of said railroad company, Greeting:

We command you and every of you that you appear before our judges of our circuit court of the United States of America for the northern district of Illinois at Chicago, in said district, on the first Monday in the month of July next, to answer the bill of complaint of the Ætna Life Insurance Company, a corporation, &c., this day filed in the clerk's office of said court, in said city of Chicago, then and there to receive and abide by such judgment and

decree as shall then or thereafter be made; upon pain of judgment being pronounced against you by default.

To the marshal of the northern district of Illinois to execute.

17 Witness, the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, at Chicago aforesaid, this 27th day of May, in the year of our Lord one thousand eight hundred and eighty-six, and of our independence the 110th year.

[SEAL.] WM. H. BRADLEY, *Clerk.*

Memorandum.

The above named defendants are notified that unless they and each of them shall enter their appearance in the clerk's office of said court at Chicago aforesaid, on or before the day to which the above writ is returnable, the complainant's bill will be taken against them as confessed and a decree entered accordingly.

WM. H. BRADLEY, *Clerk.*

Marshal's Return.

I have duly served the annexed writ in the following manner, to wit:

Upon the town of Grenard, now called Crescent, in Iroquois county, Illinois, by personally delivering to George Egley, supervisor of said town, a true copy thereof, on the ninth day of June, A. D. 1886.

I also served the same upon the Chicago, Danville and Vincennes Railroad Company, by personally delivering to Joseph

18 O. Rutter, a director of said company, a true copy thereof on the 11th day of June, A. D. 1886.

I also served the same upon Wm. H. Lyford, receiver of the Chicago, Danville & Vincennes Railroad Company by personally delivering to him a true copy thereof on the 7th day of June, 1886.

FREDERICK H. MARSH,
U. S. Marshal.
By WILL H. DUTCHER, *Deputy.*

I have served the annexed writ in the following manner, to wit:

Upon the town of Belmont, therein named, by personally delivering to John Donovan, supervisor of said town, a true copy thereof, on the 14th day of June, A. D. 1886.

F. H. MARSH,
U. S. Marshal.
GEO. N. JONES, *Deputy.*

Endorsed: Filed June 14, A. D. 1886. Wm. H. Bradley, clerk.

19 Afterwards, to wit, on the second day of July, 1886, came the town of Crescent, by its solicitor, and filed in said clerk's office its appearance in said entitled cause; which said appearance is in the words and figures following, to wit:

Appearance.

In U. S. Circuit Court, Northern Dist., Ills. In Chancery.

ÆTNA LIFE INS. CO. *vs.* TOWN OF BELMONT *et al.*

I hereby enter the appearance of the town of Grenard (now called Crescent), one of the defendants in the above-entitled *cause*, and my appearance as the sol'r for said defendant, and ask for usual time to plead, answer, or demur to complainant's bill.

DE WITT C. JONES,
Sol'r for Def't, the Town of Grenard, now called Crescent.

Endorsed: Filed July 2, 1886. William H. Bradley, clerk.

20 Afterwards, to wit, on the seventh day of July, 1886, came the Town of Belmont, by its solicitor, and filed in said clerk's office its demurrer to the bill in said entitled cause, which said demurrer is in the words and figures following, to wit:

Demurrer of Belmont.

In United States Circuit Court, Northern District of Illinois. July Term, 1886.

The demurrer of the Town of Belmont to the bill of complaint of the Ætna Life Insurance Company against the Town of Belmont and others.

This respondent, by protestation, not confessing all or any of the matters or things in the complainant's bill of complaint contained to be true in manner and form as therein set forth, doth demur to said bill, and for cause thereof shows—

That said bill does not contain any matter of equity whereon this court can ground any decree or give complainant any relief as against this respondent.

Second. It appears by said bill that the same is exhibited against respondent and the Chicago, Danville and Vincennes Railroad Company and William Lyford, its receiver, as respondents thereto, and the facts set forth in said bill show that the same relief
21 cannot be granted against all of said respondents, and said bill fails to state such facts as show said respondents are jointly liable, but the facts stated shows that this respondent, if liable in any manner, is not liable jointly or in any way connected with the others, and said bill is multifarious.

Third. Said bill fails to show any written agreement on which suit is brought that would bind respondent, and fails to state facts showing a cause of action exists against respondent that arose within five years last past before the bringing of this suit.

Fourth. It fails to show any written agreement on which suit is brought binding on respondent on which has arisen a cause of action within the last ten years prior to bringing this suit.

Fifth. Bill fails to set forth facts showing an excuse for the great

delay in bringing suit which is shown on face of bill, and equity will not relieve against laches.

Sixth. Bill contains many blanks of dates and names and nothing on face of bill from which facts can be obtained to fill.

Wherefore and for other good causes of demurrer on face of said bill this respondent demurs thereto and demands the judg-
22 ment of this court whether it shall be compelled to make any further or other answer to said bill, and prays to be hence dismissed with its costs most wrongfully sustained.

TOWN OF BELMONT,
By ROBERT DOYLE,
Its Solicitor.

I certify that, in my opinion, the foregoing demurrer of the Town of Belmont to the bill of complaint of the Ætna Life Insurance Company, complainant, is well founded in law and proper to be filed in the above cause.

ROBERT DOYLE,
Sol. for Town of Belmont.

UNITED STATES OF AMERICA,
Northern District of Illinois, Iroquois County, } ss:

John L. Donovan, supervisor of the Town of Belmont, one of the respondents, on oath states that he has heard read the foregoing demurrer to the bill of complaint of the Ætna Life Insurance Company in this suit, and that the same is not interposed for the purpose of delaying said suit or any proceedings therein.

JOHN L. DONOVAN.

Subscribed and sworn to before me, a notary public of Iroquois Co., Ill., by John L. Donovan, the supervisor of the town of Belmont, this 5th day of July, A. D. 1886.

[SEAL.] W. F. PIERSON,
Notary Public.

Endorsed: Filed July 7, 1886. Wm. H. Bradley, clerk.

23 Afterwards, to wit, on the thirty-first day of July, 1886, came the Town of Crescent, by its solicitor, and filed in said clerk's office its demurrer to the bill in said entitled cause, which said demurrer is in the words and figures following, to wit:

Demurrer of Town of Crescent.

In the United States Circuit Court, Northern District of Illinois.
July Term, A. D. 1886.

The demurrer of the town of Crescent to the bill of complaint of the Ætna Life Insurance Company against the town of Belmont and others.

This defendant, by protestation, not confessing all or any of the matters and things in said bill of complaint contained to be true,

in manner and form as the same are therein set forth doth demur thereto, and for causes of demurrer doth show—

1. That said complainant hath not in and by its said bill stated such a case as doth of ought to entitle it to any such relief as is thereby sought and prayed for from or against this defendant.

2. That if the matters stated do give the complainant any cause of complaint against the defendant the same is triable and determinable at law, and ought not be enquired of by this court, the said remedy at law being plain, adequate, and complete.

24 3. That said bill does not contain any matters of equity whereon this court can give complainant any relief as against this defendant.

4. The said bill fails to state such facts as show that the several defendants named therein are jointly liable, but the facts in said bill stated show that this defendant, if liable in any manner, is not liable jointly with the other defendants therein named, and that said bill is multifarious.

5. The said bill fails to show any written agreement on which said suit is brought binding on this defendant upon or out of which has arisen a cause of action within ten years next before the bringing of this suit.

6. The said bill fails to show any excuse for the great delay in bringing said suit, which great delay is shown on the face of said bill.

7. This bill fails to show any premise or liability or cause of action of any kind arising within five years next before the filing of the said complainant's bill.

Wherefore and for divers other errors and imperfections in said bill this defendant prays the judgment of this Court whether it shall be compelled to make any other or further answer to the said bill or to any of the matters and things therein contained, and prays to be hence dismissed with its reasonable costs in this behalf sustained.

THE TOWN OF CRESCENT,

25 By DE WITT C. JONES,

Its Solicitor.

Chicago, Illinois.

I certify that the foregoing demurrer of the Town of Crescent to the bill of complaint of the Ætna Life Insurance Company is well founded in point of law.

DE WITT C. JONES,
Sol'r for Town of Crescent, Def't.

UNITED STATES OF AMERICA,
Northern District of Illinois, Iroquois County:

George Egley, supervisor of the Town of Crescent, one of the defendants in this cause, on oath states that he has read the foregoing demurrer to the bill of complaint of the Æta Life Insurance Company in this suit and that the same is not interposed for delay.

GEORGE EGLEY.

Subscribed and sworn to before me, a notary public of Iroquois county, Illinois, by George Egley, the supervisor of the Town of Crescent, this 29th day of July, A. D. 1886.

[SEAL.] JOHN S. HARWOOD,
Notary Public.

Endorsed: Filed July 31, 1886. W. H. Bradley, clerk.

26 Afterwards, to wit, on the thirteenth day of June, in the adjourned May term of said court, 1887, in the record of the proceedings thereof in said entitled cause before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Order.

ÆTNA LIFE INSURANCE COMPANY
vs.
TOWN OF BELMONT *et al.*
} In Chancery.

It appearing to the court that the defendant, Chicago, Danville and Vincennes Railroad Company has been served with process, but has not appeared herein, and it being now three times solemnly called in open court to appear and plead, answer, or demur to the complainant's bill, comes not, but makes default, it is thereupon ordered that its default be entered and that said bill be taken as confessed and true as against the said defendant company.

And now come the parties, by their solicitors, and the demurrers of the Town of Belmont and the Town of Grenard (now called Cresent) are now submitted to the court under stipulation this day filed and upon briefs, and taken under advisement by the court.

27 Afterwards, to wit, on the fifth day of July, in the July term of said court, 1887, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Decree.

ÆTNA LIFE INSURANCE COMPANY
vs.
TOWN OF BELMONT *et al.*
} In Chancery.

Now again come the parties, by their solicitors, and the court having considered the demurrer of the town of Belmont and the town of Grenard, now called Crescent, to the bill herein, sustains said demurrers. It is thereupon ordered and adjudged that said bill be dismissed for want of equity at complainant's costs and that execution issue therefor.

28 Afterwards, to wit, on the seventh day of July, 1887, came the complainant, by its solicitors, and filed in said clerk's office its motion for appeal in said entitled cause, which said motion for appeal is in the words and figures following, to wit:

Motion for Appeal.

In the Circuit Court of the United States, Northern District of Illinois. July Term, A. D. 1887.

THE ÆTNA LIFE INSURANCE COMPANY, Complainant,
vs.
THE TOWN OF BELMONT, THE TOWN OF GRENARD (formerly Crescent), *et al.*, Defendants.

Bill in equity.

Now comes said complainant and prays said court for an appeal from its final order and decree of July 5th, 1887, sustaining the demurrer of said towns to said bill and dismissing said case, and asks the court for sixty days or such reasonable time as the court may allow within which to present its appeal bond herein in its said appeal to the Supreme Court of the United States.

BAILEY & SEDGWICK,
Complainant's Solicitors.

Endorsed: Filed July 7, 1887. Wm. H. Bradley, clerk.

29 On the same day, to wit, on the seventh day of July, in the July term of said court, 1887, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Order.

ÆTNA LIFE INSURANCE COMPANY
vs.
TOWN OF BELMONT *et al.*
} In Chancery.

Now comes the complainant, by its solicitor, and prays an appeal from the decree of dismissal herein to the Supreme Court of the United States, which is allowed upon said complainants giving bond, according to law, in the penal sum of five hundred dollars, with surety, to be approved by the clerk.

30 Afterwards, to wit, on the twenty-second day of July, 1887, there was filed in said clerk's office an appeal bond in said entitled cause, which said appeal bond is in the words and figures following, to wit:

Appeal Bond.

Know all men by these presents that the Ætna Life Insurance Company, of Hartford, Connecticut, and Bailey & Sedgwick (O. J. Bailey & J. H. Sedgwick) are held and firmly bound in the penal sum of five hundred dollars, good and lawful money of the United States, to the town of Belmont, and the town of Grenard, formerly Crescent, in the county of Iroquois and State of Illinois, and the Chicago, Danville & Vincennes Railroad Company, their successors,

assigns, and legal representatives, for the payment of which well and truly to be made, said obligors hereby bind themselves, their heirs, executors, administrators, and successors jointly, severally, and firmly by these presents.

Witness the hands and seals of said obligors this 18th day of July, A. D. 1887.

The condition of this obligation is such that whereas in the circuit court of the United States for the northern district of Illinois, at the July, 1887, term thereof, to wit, July 5th, 1887, said obligees obtained a judgment and decree against said obligor, The Ætna
31 Life Insurance Company in a certain case in equity then and therein pending, in which said obligor was complainant and said obligees defendants, upon demurrer by said towns to said complainant's bill therein, sustaining said demurrer and dismissing said bill of complaint, at complainant's costs, from which judgment and decree said complainant has taken an appeal to the Supreme Court of the United States, now if said appellant shall prosecute its said appeal to effect, or if it fail to make its plea good, shall answer all damages and costs therein, then this obligation to be void; otherwise to remain in full force and effect.

[SEAL.] JOHN C. WEBSTER, [SEAL.]
Vice-President.
JAS. H. SEDGWICK, *Surety.* [SEAL.]
O. J. BAILEY, *Surety.* [SEAL.]

Approved:
WM. H. BRADLEY, *Clerk.*

Endorsed: Filed July 22d, 1887. Wm. H. Bradley, clerk.

32 NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, William H. Bradley, clerk of the circuit court of the United States for said northern district of Illinois, do hereby certify the above and foregoing to be a true and correct transcript of the record of all the proceedings had in said court in the cause wherein The Ætna Life Insurance Company is the complainant and The Town of Belmont, The Town of Grenard, now called Crescent, and The Chicago, Danville and Vincennes Railroad Company are the defendants, as the same appear from the files and records of said court now remaining in my custody and control.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at my office, in Chicago, in said district, this twelfth day of September, 1887.

[Seal of Circuit Court U. S., Northern Dist. Illinois. 1855.]

WM. H. BRADLEY, *Clerk.*

Endorsed on cover: N. Illinois, C. C. U. S. No. 1135. The Ætna Life Insurance Company of Hartford, Connecticut, appellant, *vs.* The Town of Belmont, and The Town of Grenard (now called Crescent). Filed October 8, 1887.